

## Coast Guard, DHS

## § 115.10

in effect until the final agency action is taken.

(33 U.S.C. 401, 491, 525, 535; 49 CFR 1.46(c) (8), (9), (10), (q))

[CGD 76-144, 42 FR 28882, June 6, 1977]

### § 114.50 Right of appeal.

A District Commander's decision to deny a bridge permit application or an application for drawbridge operation regulations may be appealed to the Commandant, U.S. Coast Guard. The appeal must be submitted in writing to the Commandant (CG-BRG), Attn: Office of Bridge Programs, U.S. Coast Guard Stop 7418, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7418, within 60 days of the District Commander's decision. The Commandant will take action on the appeal within 90 days of its receipt.

(5 U.S.C. 559; 14 U.S.C. 633; 33 U.S.C. 401, 491, 499, and 525; and 49 CFR 1.46(c) and (q))

[CGD 80-099, 46 FR 38354, July 27, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 114.50, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

## PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

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AUTHORITY: c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633.

SOURCE: CGFR 67-46, 32 FR 17771, Dec. 12, 1967, unless otherwise noted.

### § 115.01 Purpose.

This part states the requirements for applying for a permit to construct or modify bridges crossing the navigable waters of the United States. It also sets forth the procedures by which the application is processed by the Coast Guard.

[CGD 82-006, 47 FR 36641, Aug. 23, 1982, as amended by USCG-2012-0306, 77 FR 37314, June 21, 2012]

### § 115.05 Necessary primary authority.

For bridges constructed by State or municipal agencies, the primary authority will be presumed without proof. If the law of the State requires a license for or approval of the bridge from a constituted State agency, a copy of such license or approval will be required and may be accepted as evidence of the primary authority. If there is no State regulation of bridges in navigable waters, the necessary primary authority may be that granted in the charter of a corporation, or the authority inherent in the ownership of the land on which the structure is placed. The applicant will in such cases be required to furnish an extract from the charter, or a statement of ownership. Special care will be taken that Federal approval is not granted when there is doubt of the right of the applicant to construct and utilize the bridge.

[CGFR 67-46, 32 FR 17771, Dec. 12, 1967, as amended by USCG-2011-0257, 76 FR 31836, June 2, 2011; USCG-2012-0306, 77 FR 37314, June 21, 2012]

### § 115.10 Limiting date in permits.

(a) Specific time limitations are inserted in all permits for the commencement of construction and completion thereof. Normally three years for start of construction and two additional years for completion may be allowed.

(b) Specific time limitations are inserted in all permits for the removal of bridges being replaced in whole or in part by the newly permitted bridges where removal thereof is required as a condition of the permit. Normally 90 days for removal after completion of the new bridge or opening to land

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transportation, whichever occurs first, may be allowed.

[CGD 75–046, 40 FR 24898, June 11, 1975, as amended by CGD 80–099, 46 FR 38354, July 27, 1981]

### § 115.15 Permit bonds.

When compensatory works or the removal of temporary structures should be required of the permittee, or in other unusual cases when there is reason to anticipate that the permittee may fail to carry out parts of the work that are against his interest, an additional condition will be included in the permit requiring the permittee to furnish a bond insuring compliance with the permit requirements.

### § 115.20 Transfer of permits.

Permits express merely the assent of the Federal Government so far as concerns the public rights of navigation. Although issued to a specific party, the assent is not limited to execution of the work by that party and may be availed of by the assignees or purchasers of the property affected, provided the terms of the instrument are strictly complied with.

### § 115.30 Sufficiency of State authority for bridges.

An opinion of the attorney general of the State as to the sufficiency of State authority for the construction of a bridge is acceptable to the Coast Guard in doubtful cases.

### § 115.40 Bridge repairs.

Repairs to a bridge which do not alter the clearances, type of structure, or any integral part of the substructure or superstructure or navigation conditions, but which consist only in the replacement of worn or obsolete parts, may, if the bridge is a legally approved structure, be made as routine maintenance without a formal permit action from the U.S. Coast Guard.

[CGFR 67–46, 32 FR 17771, Dec. 12, 1967, as amended by USCG–2012–0306, 77 FR 37314, June 21, 2012]

### § 115.50 Application for bridge permits.

(a) *Application.* An application for authorization to construct a bridge

across navigable waters of the United States must include the name, address, and telephone number of the applicant; the waterway and location of the bridge; a citation to the applicable act of Congress; when appropriate, a citation to the State legislation authorizing the bridge; a map of the location and plans of the bridge showing the features which affect navigation; and papers to establish the identity of the applicant.

(b) *Prior authority necessary.* Except as provided under paragraph (c) of this section, a bridge cannot lawfully be constructed across any navigable waterway of the United States until the location and plans have been approved by the Coast Guard.

(c) *Prior authority not necessary.* Coast Guard approval of the location and plans for construction or modification of a bridge or causeway is not required for any bridge or causeway over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce, whether or not such waters were used or were susceptible to use, at some previous time, to transport commerce (historic use). This provision does not apply to bridges which connect the United States with any foreign country.

(d) *Signature.* In case of signature by an agent or by an official of a corporation, a duly authenticated copy of the authority for the action must accompany the application.

(e) *Identification.* If the applicant is a corporation, it must furnish certified copies of the following papers, all properly authenticated: The charter or articles of incorporation; the minutes of organization; extract from minutes showing the names of the present officers of the corporation.

(1) Where State laws vest in State or county officers, such as boards of supervisors and county courts, the power to authorize the construction of bridges, they must furnish with their application certified extracts from their proceedings showing their action authorizing the proposed structure.

(f) *Plans.* One reproducible set of plans must be submitted with the application, on which the location of the work and the essential features covered by the application will be identified. Each drawing must have a title block located in the lower right-hand corner identifying the applicant/agent and bridge owner; the waterway; the milepoint on the waterway of the bridge location; the city, county, and state of the bridge location; the name of the bridge; the date of the plans; the sheet number; and the total number of sheets in the set.

(g) *Size of sheets.* The drawings will be on letter size sheets. As few sheets will be used as necessary to show clearly what is proposed.

(h) *Special instructions.* (1) Vertical and horizontal distances will be shown using bar scales. The north and south line will be indicated by a meridian arrow. Soundings and elevations will be shown in feet and refer to the established Government datum plane at the locality.

(2) The direction of currents will be indicated by an arrow, and the strength of currents, both ebb and flow, or low water and high water, will be shown close to the proposed location of the bridge, and at both ends of the waterway shown on the map of location.

(3) The plans will show in figures the least clear height of the lowest part of the superstructure over navigation openings, with reference to the planes of mean high water and mean low water if the bridge is to cross tidal water. If the waters are nontidal, the least clear height will be shown with reference to the planes of extreme high water and mean low water. If records of river heights are available, the plane above which flood waters have not remained more than 2 percent of the time will be indicated. Reference will also be made to other datum planes if appropriate for the waterway in question.

(4) If harbor lines have been established at the site of the bridge, their position will be shown on the plans.

(i) *Structural details.* Only those should be shown which are needed to illustrate the effect of the proposed structure on navigation. If the bridge is to be equipped with a draw, the latter will be shown in two positions:

Closed and open. In those cases, the vertical and horizontal clearances shall be indicated in both the closed and open positions.

(j) *To whom application should be presented.* The application and the papers and plans accompanying it should be submitted to the District Commander having jurisdiction over the area in which the bridge site is located.

[CGFR 67-46, 32 FR 17771, Dec. 12, 1967, as amended by CGD 75-046, 40 FR 24898, June 11, 1975; CGD 80-099, 46 FR 38354, July 27, 1981; CGD 82-102, 48 FR 54299, Dec. 2, 1982; USCG-2011-0257, 76 FR 31836, June 2, 2011; USCG-2012-0306, 77 FR 37314, June 21, 2012]

#### § 115.60 Procedures for handling applications for bridge permits.

The following procedures will be observed in the handling of applications for permits to construct, modify, or replace bridges over navigable waters.

(a) *District Commander's review of application and plans.* When an application is received, the District Commander verifies the authority for construction of the bridge, reviews the application and plans for sufficiency, ascertains the views of local authorities and other interested parties, and ensures that the application complies with relevant environmental laws, regulations, and orders. If the application contains any defects that would prevent issuance of a permit (as for example, if the proposed bridge provided insufficient clearance), the applicant is notified that the permit cannot be granted and given reasons for this determination. The applicant may then request that the application be considered by the Commandant. If the applicant makes such a request, or if the application is not found defective, the District Commander notifies the public that it has been received and continues its processing. A copy of this notification will be sent to the state, interstate agency or the Environmental Protection Agency (EPA) responsible for acting on requests for water quality certification for the project. If the state, interstate agency, or the EPA fails to issue or deny the water quality certification within 30 days after receiving the copy of this notification, the requirements for a water quality

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certification are waived. If the appropriate agency notifies the District Commander that the applicant has not filed a request for water quality certification, or requests additional time to review an application, additional time will be granted.

(b) *Public meeting.* (1) Public meetings will be held when there are substantial issues concerning the effect that the proposed bridge will have on the reasonable needs of navigation.

(2) Notice of the public meeting will be published in the FEDERAL REGISTER. Notice of the meeting is also mailed to State, county, and municipal authorities and all other known interested parties. It is also posted at the post office nearest the site and public places in the vicinity.

(3) Meetings are public and conducted in an informal manner. A designated Coast Guard official presides. The submission of written statements is invited and encouraged. Anyone desiring to do so may speak. Statements, written or oral, are not under oath, and cross-examination is not permitted. No fixed order has been established for the presentation of evidence or argument although proponents are generally heard first, followed by opponents with full opportunity afforded for rebuttals.

(c) *Report and recommendations.* After the close of the comment period and any public meeting, a detailed statement of findings, conclusions, and recommendations based on all available information (including Coast Guard records and experience) is prepared. The following factors may be discussed in this report:

(1) Comparison of proposed bridge with existing bridges over the waterway; attitude of local authorities; summary of objections raised by the public, and District Commander's comments or responses; probable effect on navigation, present and prospective.

(2) Description of the navigation on the waterway past the site of the proposed bridge, the number and type of vessels, the number of vessel trips, and the principal method of handling traffic, whether in single vessels or in tows.

(3) Whether the District Commander approves, or recommends approval of the plans. If they are found objection-

able, the reasons for this finding will be stated. If there are objectionable features in the plans which may be corrected, the applicant is given an opportunity to revise them. If approval is given or recommended, all conditions to which the permit should be subject will be stated.

(d) *Action on permit application.* (1) The District Commander may issue the permit if authorized under §1.01–60(b) of this chapter; otherwise, a report with the application shall be submitted to the Commandant for final action.

(2) When an application is approved, the issuing official signs the permit and transmits it to the applicant.

(3) When an application is not approved, the applicant is notified and provided with reasons for the disapproval and suggestions for modifications that would justify reconsideration, if appropriate.

(4) If an application is disapproved by the District Commander, the applicant may appeal this decision to the Commandant under §114.50 of this chapter. The Commandant's determination shall constitute final agency action.

(e) *Permit amendments.* Applications for amendments to permits will be processed in the same manner as permit applications. The District Commander may approve amendments to any permits which that official is authorized to issue under §1.01–60(b) of this chapter. All other amendments must be approved by the Commandant.

(5 U.S.C. 559; 14 U.S.C. 633; 33 U.S.C. 401, 491, 499, and 525; and 49 CFR 1.46(c) and (q))

[CGD 80–099, 46 FR 38354, July 27, 1981; 46 FR 42268, Aug. 20, 1981, as amended by CGD 82–006, 47 FR 36641, Aug. 23, 1982; CGD 82–074, 47 FR 51865, Nov. 18, 1982; USCG–2008–0179, 73 FR 35012, June 19, 2008; USCG–2010–0351, 75 FR 49410, Aug. 13, 2010; USCG–2012–0306, 77 FR 37314, June 21, 2012; USCG–2013–0397, 78 FR 39174, July 1, 2013]

### § 115.70 Advance approval of bridges.

(a) The General Bridge Act of 1946 requires the approval of the location and plans of bridges prior to start of construction (33 U.S.C. 525). The Commandant has given his advance approval to the location and plans of bridges to be constructed across reaches of waterways navigable in law, but not actually navigated other than

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by logs, log rafts, rowboats, canoes and small motorboats. In such cases the clearances provided for high water stages will be considered adequate to meet the reasonable needs of navigation. The Coast Guard recommends notice to the District Bridge Manager to ensure that the District has determined that advance approval provision is applicable to the waterway reach over which the bridge is to be constructed.

(b) The term “small motorboats” shall be interpreted in the light of the things and conditions with which it is associated. The term means rowboats, canoes and other similar craft with outboard motors. It does not include sailing or cabin cruiser craft.

(14 U.S.C. 633; 33 U.S.C. 401, 491, and 525; and 49 CFR 1.46(c))

[CGFR 67-46, 32 FR 17771, Dec. 12, 1967, as amended by CGD 81-076, 46 FR 54936, Nov. 5, 1981; USCG-1998-3799, 63 FR 35527, June 30, 1998; USCG-2013-0397, 78 FR 39174, July 1, 2013]

### PART 116—ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES

Sec.

116.01 General.

116.05 Complaints.

116.10 Preliminary review.

116.15 Preliminary investigation.

116.20 Detailed investigation.

116.25 Public meetings.

116.30 Chief, Office of Bridge Programs Review and Evaluation.

116.35 Order to Alter.

116.40 Plans and specifications under the Truman-Hobbs Act.

116.45 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible for funding under the Truman-Hobbs Act.

116.50 Apportionment of costs under the Truman-Hobbs Act.

116.55 Appeals.

AUTHORITY: 33 U.S.C. 401, 521.

SOURCE: CGD 91-063, 60 FR 20902, Apr. 28, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 116 appear by USCG-2008-0179, 73 FR 35012, June 19, 2008 and USCG-2010-0351, 75 FR 49410, Aug. 13, 2010.

#### § 116.01 General.

(a) All bridges are obstructions to navigation and are tolerated only as

long as they serve the needs of land transportation while allowing for the reasonable needs of navigation.

(b) This part describes the general procedures by which the U.S. Coast Guard determines a bridge to be an unreasonable obstruction to navigation and issues an Order to Alter under the authority of the following statutes, as appropriate: Section 18 of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. 502; Section 4 of the Bridge Act of 1906, 33 U.S.C. 494; or the Truman-Hobbs Act of 1940, as amended, 33 U.S.C. 511-524.

(c) A bridge constructed across a navigable water of the United States shall not unreasonably obstruct the free navigation of the water over which it was constructed, either due to insufficient height or width of the navigation span, or because of difficulty in passing through the draw opening. If any bridge unreasonably obstructs navigation, the Commandant, U.S. Coast Guard, will order the alteration of that bridge. Alterations may include structural changes, replacement, or removal of the bridge.

(d) Whenever the Coast Guard has good reason to believe that a bridge across any of the navigable waters of the United States is an unreasonable obstruction to navigation, the Coast Guard will give notice to the owner of the bridge and other interested parties, and hold a public meeting at which the interested parties will have a full opportunity to be heard and to provide information on the question of whether alterations to the bridge are necessary and, if so, the extent of alterations needed.

(e) If the Coast Guard determines that alterations to a bridge are necessary, the Commandant, U.S. Coast Guard, will issue to the bridge owner an Order to Alter containing details of the alterations necessary to render navigation through or under the bridge reasonably free, easy, and unobstructed.

(1) In the case of a railroad or publicly owned highway bridge, an Order to Alter is issued to the bridge owner under the provisions of the Truman-Hobbs Act (33 U.S.C. 511 *et seq.*). In ordering these alterations, the Coast